

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

David Billups,
Plaintiff

Case No. C-1-01-377

vs

James McWeeney, et al.,
Defendants

ORDER
(Spiegel, J.; Hogan, M.J.)

This matter is before the Court on plaintiff's motion to amend/supplement the complaint to include John or Jane Doe and for discovery (Doc. 135) and second motion to amend the complaint to add defendant John or Jane Doe and for discovery. (Doc. 138).

Plaintiff seeks to amend his complaint to add as a defendant in this matter John or Jane Doe cashier who allegedly received plaintiff's legal papers and cash slips on December 3, 1999. Plaintiff also seeks an order extending the discovery deadline to obtain evidence in support of his denial of access to the courts claim against such new defendant.

Plaintiff's motions to amend and for discovery must be denied as futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Brooks v. Celeste*, 39 F.3d 125, 130 (6th Cir. 1994). Plaintiff's motions to amend seek to add new parties after the two year statute of limitations has run which is impermissible but for relation back of the proposed amended complaint under Fed. R. Civ. P. 15(c). *See Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir.), *cert. denied*, 519 U.S. 821 (1996). Plaintiff's proposed amended complaint would not relate back to the original complaint under Rule 15(c)(3) because there was no mistake as to the identity of the proper party within the meaning of Rule 15(c)(3), but rather the addition of an entirely new party to the action which plaintiff had not attempted to name in the original complaint. *See Bauer v. Ohio Adult Parole Authority*, 173 F.3d 854 (6th Cir. 1999)(unpublished), 1999 WL 191334. Moreover, for the reasons stated in the District Court's Order of December 30, 2003 rejecting plaintiff's second argument, plaintiff's denial of access to the courts claim is without merit even if the court permitted an amendment of the complaint at

this late juncture. (Doc. 133 at 10).

Therefore, plaintiff's motion to amend/supplement the complaint to include John or Jane Doe and for discovery (Doc. 135) and second motion to amend the complaint to add defendant John or Jane Doe and for discovery (Doc. 138) are **DENIED**.

IT IS SO ORDERED.

Date: 2/12/2004

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge